

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

04 10561 NG

Case No.

GRAHAM ARCHITECTURAL PRODUCTS CORP. MAGISTRATE JUDGE Bowley

Plaintiff,

v.

STEALTH WINDOWS OF MASSACHUSETTS, INC. and
FIDELITY AND GUARANTY INSURANCE CO.,
Defendants.

COMPLAINT

RECEIPT #

AMOUNT \$ 150SUMMONS ISSUED YES

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DRAFTING CLK F.O.MDATE 3/22/04**INTRODUCTION**

The Plaintiff Graham Architectural Products Corp. ("Graham") brings this Complaint seeking money damages for breach of contract and quantum meruit in connection with the failure of the Defendant Stealth Windows Of Massachusetts, Inc. ("Stealth") to perform in accordance with that certain written agreement between Graham and Stealth and in connection with the failure of the Defendant Fidelity And Guaranty Insurance Co. ("Fidelity") to perform in accordance with that certain labor and material payment bond issued by Fidelity on behalf of Stealth. In support thereof, Graham states as follows:

JURISDICTION AND VENUE

Graham is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and having its principal place of business in the Commonwealth of Pennsylvania. The Defendant Stealth is a Massachusetts corporation with a principal place of business at 11 Huntley Lane, Lincoln, Middlesex County, Massachusetts. The Defendant Fidelity is a surety company authorized to do business in Massachusetts with a place of business at 385 Washington Street, MC 514C, St. Paul, Minnesota. The matter

in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00. Venue is properly placed in this Court as the events giving rise to this claim occurred in this district and the Defendant Stealth is located herein.

PARTIES

1. The Plaintiff Graham is a Pennsylvania business corporation with a principal place of business at 1551 Mount Rose Avenue, York, Pennsylvania.
2. The Defendant Stealth is a Massachusetts corporation with a principal place of business at 11 Huntley Lane, Lincoln, Middlesex County, Massachusetts.
3. The Defendant Fidelity is a surety company authorized to do business in Massachusetts with a place of business at 385 Washington Street, MC 514C, St. Paul, Minnesota.

FACTS

4. Hodess Building Co., Inc. (“Hodess”), as general contractor, and the Town of Plainville (“Town”), as owner, entered into a public construction contract for the project known as the New Wood Elementary School in Plainville, Massachusetts (“Project”).
5. Hodess, in furtherance of its contract with the Town, entered into a subcontract with Stealth (“Subcontract”).
6. Stealth furnished Hodess with a labor and materials payment bond issued by Fidelity (“Fidelity Bond”) guaranteeing payment of all Stealth’s subcontractors and suppliers who furnished labor, materials and/or equipment used or employed in the Project.
7. In furtherance of its Subcontract with Hodess, Stealth entered into a contractual relationship (“Subcontract”) with Graham wherein Graham furnished labor, materials and equipment used or employed in construction of the Project.

8. The Subcontract price was \$119,000.00.
9. To the extent permitted, Graham has performed every condition of the Subcontract.
10. The sum of \$87,712.33 remains due and owing to Graham for materials fabricated and supplied to the Project.
11. On December 1, 2003 and February 18, 2004, Graham made demand upon Stealth and Fidelity.
12. Despite demand, Stealth and Fidelity have failed and refused to pay.
13. All conditions precedent to the maintenance of this action have been performed.

**COUNT I – BREACH OF CONTRACT
STEALTH/FIDELITY**

14. Graham realleges the allegations contained in paragraphs 1 through 8 above as if fully set forth herein.
15. Graham furnished the requested labor, materials and equipment to Stealth which were used or employed in construction of the Project.
16. Stealth failed, without legal excuse, to pay for the labor, materials and equipment furnished by Graham.
17. Graham realleges the allegations contained in paragraphs 9 through 13 above as if fully set forth herein.

WHEREFORE Graham demands judgment against Stealth and Fidelity, jointly and severally, for \$87,712.33 plus interest and costs.

**COUNT II – QUANTUM MERUIT
STEALTH/FIDELITY**

18. Graham realleges the allegations contained in paragraphs 1 through 8 above as if fully set forth herein.
19. Stealth requested Graham provide labor, materials and equipment.

20. Pursuant to Stealth's request, Graham substantially furnished in good faith the labor, materials and equipment requested by Stealth
21. The fair and reasonable value of Graham' labor, materials and equipment used or employed in construction of the Project which remains unpaid is \$87,712.33.
22. Graham realleges the allegations contained in paragraphs 9 through 13 above as if fully set forth herein.

WHEREFORE Graham demands judgment against Stealth and Fidelity, jointly and severally, for \$87,712.33 plus interest and costs.

GRAHAM ARCHITECTURAL
PRODUCTS CORP.

By its attorneys,



Francis A. Shannon, III, Esq.
BBO # 560651
Steven Shane Smith, Esq.
BBO # 630713
Shannon Law Associates, Inc.
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Date: 03/19/04

Of counsel:

Mark A. Rosen, Esq.
Inactive Status
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(973) 993-8100

3007:001:complaint1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Graham Architectural Products Corp. v.
Stealth Windows Of Massachusetts, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/K

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Francis A. Shannon, III, Esq.

ADDRESS Shannon Law Associates, Inc., One Bowdoin Square, 9th Floor, Boston, MA 02114

TELEPHONE NO. (617) 263-1313

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Graham Architectural Products Corp.

DEFENDANTS

Stealth Windows Of Massachusetts, Inc. and Fidelity And Guaranty Insurance Co.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Pennsylvania
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Middlesex County, MA
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Francis A. Shannon, III, Esq.
Shannon Law Associates, Inc.
One Bowdoin Square, 9th Floor
Boston, MA 02114

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

		PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/>
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/>	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Manne <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> T95 Contract Product Liability	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Manne <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentences HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		

V. ORIGIN

- Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from

 7 Magistrate JudgmentVI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Plaintiff seeks \$87,712.33 from Defendants for breach of contract and quantum meruit as a result of Defendants breach of contract.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$ 87,712.33

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NOVIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/19/04

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